

Prince Declaration

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HACHETTE BOOK GROUP, INC.,
HARPERCOLLINS PUBLISHERS LLC,
JOHN WILEY & SONS, INC., and
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

vs. Case No. 1:20-cv-04160-JGK

INTERNET ARCHIVE and DOES 1
through 5, inclusive,

Defendants.

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
JEFFREY PRINCE
Thursday, June 9, 2022

Reported By: Lynne Ledanois, CSR 6811
Job No. 5255194

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1 My main point, whatever that was, it 11:29AM
2 doesn't change that not accounting for those factors
3 calls into question the reliability of their
4 results.

5 Q Did you have the information available to 11:29AM
6 you that would have been necessary to take into
7 account the potential confounding factors that in
8 your view should have been taken into account in
9 Dr. Reimers's and Dr. Jørgensen's reports?

10 A A couple of things. I'm not sure to the 11:30AM
11 extent what I would have had or not had. We did not
12 do a full investigation of all the data that we could
13 have assembled.

14 Again, that wasn't part of what my
15 understanding of what I was asked to do was. 11:30AM

16 So I did not -- I guess the other thing to
17 highlight there is that what I gave were a number of
18 examples. I wasn't attempting to say, here's the
19 exhaustive list, here's everything that needs to be
20 accounted for and how. 11:30AM

21 I was simply pointing out that here's a
22 number of things that not accounting for those alone
23 create major problems with the ability to come to
24 these conclusions.

25 Q Even taking into account the issues you 11:31AM

1 relationships informative about the questions that 11:32AM
2 she's trying to answer?

3 Again, I think as I pointed out in my
4 report, there is a lot of reasons to doubt that
5 that's the case. 11:32AM

6 BY MR. GRATZ:

7 Q Do you think that it would be possible to
8 do an improved version of Dr. Jørgensen's analysis
9 taking into account additional data that would
10 provide greater reliability in answering those 11:33AM
11 questions?

12 MS. STEINMAN: Objection.

13 THE WITNESS: It may be possible. But as
14 I said, I haven't gone through and tried to collect
15 or assess the data that might be available and the 11:33AM
16 way to incorporate it properly.

17 All I know is that the analysis that he
18 did is not adequate to come to the conclusions that
19 he came to.

20 BY MR. GRATZ: 11:33AM

21 Q Do you think that it would be impossible
22 to do an improved version of Dr. Reimers's analysis
23 taking into account additional data that provide
24 greater reliability in answering the questions
25 Dr. Reimers was seeking to answer? 11:34AM

1 MS. STEINMAN: Objection. 11:34AM

2 THE WITNESS: Again, I would say the same
3 thing, I haven't fully assessed what available
4 additional information or how to incorporate it if
5 one were to try to improve. 11:34AM

6 But again, I believe what was done is not
7 adequate to be able to come to the conclusions that
8 she came to.

9 BY MR. GRATZ:

10 Q Do you have particular expertise in the 11:35AM
11 book publishing industry versus other industries?

12 A I have familiarity with book publishing
13 primarily through the study of copyright law.

14 I developed a course when I was at Cornell
15 on economic regulation that included that topic, and 11:35AM
16 material from that course is also used in
17 accounting.

18 MS. STEINMAN: Off the record. Jeff, your
19 mic is dropping a little bit.

20 THE WITNESS: I'll try to speak up. 11:36AM

21 BY MR. GRATZ:

22 Q When did you teach that course that
23 covered copyright law?

24 A I taught that throughout my time at Cornell
25 from 2004 to 2010. 11:36AM

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1 the break? 3:50PM

2 MS. STEINMAN: Objection, that's
3 privileged. I direct you not to answer.

4 BY MR. GRATZ:

5 Q What are those thoughts? 3:50PM

6 A In general, obviously with Dr. Reimers, she
7 put in more variability into her analysis. But I
8 think it's -- it still is not able to capture a proper
9 estimate of what the effect of putting the book up on
10 Internet Archive is. 3:50PM

11 So the broader point would be, A, she only
12 focuses on just that component, so adding more
13 controls to that particular set of analyses that she
14 did in her original report and then, B, it still
15 suffers from the same sets of problems. 3:51PM

16 You put in a few extra controls, it's
17 still the case that there is a number of other
18 things that are going on that are important that are
19 difficult or that she was not able to control for.

20 I think she generally suffers from a 3:51PM
21 problem of the difficulty that arises when you want
22 to have a small window around the event to be able
23 to properly identify what's going on. But the event
24 at the time it took place is when there was not as
25 much action in terms of Internet Archive's presence 3:51PM

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1 in the marketplace. 3:51PM

2 And so to look at the window around, say,
3 availability in 2015, one would reasonably be
4 skeptical as to whether that says much about what
5 availability would do in 2020. 3:52PM

6 But then to extend the analysis to 2020
7 and still use the same dummy variable for
8 availability in 2015, now you're stuck in a
9 situation that's such a long period that there's
10 many things that likely changed over that time frame 3:52PM
11 as to make it very difficult to say it's due to the
12 posting on Internet Archive.

13 So that's the general critique that I
14 think just isn't able to be addressed with what her
15 additional analysis does. 3:52PM

16 Q Anything else?

17 A Let's see. This is all off the top of my
18 head. I have not obviously submitted a written
19 document about this.

20 But I think, again, with Dr. Reimers, I 3:52PM
21 agree that she concedes that looking at e-Books is
22 important, but she claims she couldn't do it.
23 That's her claim.

24 I think the relative importance of the
25 backlist, I think she added some important 3:53PM

1 clarifications there, that it could actually be 3:53PM
2 quite a bit more substantial than I think she
3 originally implied.

4 With Dr. Jørgensen, I think, you know, in
5 his case, we're still in a situation where he's 3:53PM
6 really just doing a pre-post analysis and saying any
7 difference that you see is because of the takedown
8 of the NEL.

9 And I think that's just -- you know, his
10 additional analysis doesn't mitigate that fact. And 3:53PM
11 I guess, you know, the analogy that I have in my
12 mind is this is why people would be reluctant --
13 I've done a lot of airline analysis. And airline
14 analyst researchers generally don't draw a lot of
15 conclusion by looking at, say, Q3 versus Q4 in 2001. 3:54PM

16 So a lot of times people would drop that
17 from the analysis because they recognize there are
18 major macroeconomic events that would very plausibly
19 interfere with your ability to identify the effects
20 that you're intending to measure. 3:54PM

21 I think that's exactly the kind of concern
22 that Dr. Jørgensen has to grapple with here because
23 there are major events going on at the time that
24 he's looking at.

25 So then to act like you can do a pre-post 3:54PM

1 digital lending had on publisher's revenues? 4:38PM

2 MS. STEINMAN: Objection, asked and
3 answered.

4 THE WITNESS: I did not try to quantify
5 that, no. 4:38PM

6 BY MR. GRATZ:

7 Q Do you know whether that effect would be
8 positive or negative?

9 A I laid out the economic reasoning that I
10 believe points to it being detrimental, having harm. 4:38PM

11 Q But you don't know whether that economic
12 reasoning, in fact, played out in that way; right?

13 MS. STEINMAN: Objection.

14 THE WITNESS: I don't have the numerical
15 estimates on that. I think it's -- whatever its 4:39PM
16 economic reasoning or general theoretical arguments,
17 to the extent that the premises are sensible and
18 credible, I believe that the conclusions then
19 reasonably follow. And I believe those assumptions
20 were credible. 4:39PM

21 BY MR. GRATZ:

22 Q It is possible that upon examination of
23 the data through an econometric analysis, it would
24 turn out that the effect was either zero or positive
25 with respect to publishers' revenues? 4:39PM

1 don't know if I have the particular figures, but I 4:58PM
2 remember a rough estimate was that it -- I think it
3 was maybe a 5 to 10 percent effect on the numbers that
4 I originally put forth.

5 Q In what direction? 4:59PM

6 A They would go down by that about 5 to
7 10 percent, I believe.

8 Q Just for the record, what are the numbers
9 that results from the new analysis that excludes
10 audio books? 4:59PM

11 A These are revenues from OverDrive for the
12 works in suit at various points in time.

13 So let's see. This is -- I guess the most
14 relevant figure would be the 1.56 million through
15 OverDrive for sales of the works in suit between 4:59PM
16 2017 and 2020. So that number would be a bit lower
17 if you take out audio books.

18 Q Right and my question was: Just for the
19 record and recognizing that you may or may not be
20 able to answer it sitting here today, what number 5:00PM
21 does that change to in your revised analysis?

22 A I don't know specifically. I think it's in
23 the 1.4 something range million, but I'm not sure
24 exactly.

25 Q What would you need to reference to be 5:00PM

1 similarities in -- let's see. What does she call 6:07PM
2 them? Transaction costs, okay.

3 But again, my response to that would be
4 that while there may be some overlap in the
5 transaction costs, they are not the same. 6:07PM

6 I don't think what she's laid out there
7 establishes that they are the same.

8 So Paragraph 3, I think this is just her
9 reiterating this claim that she made that they will
10 spend the same amount of money and I stand by my 6:08PM
11 point that even if they did spend the same amount of
12 money, it wouldn't necessarily go to the same
13 people. So I think she's not addressed that point.

14 Paragraph 4 she's just saying there's
15 no -- she herself has no evidence to support my 6:08PM
16 claim, but that doesn't mean it's not economically
17 well reasoned.

18 She clarifies what she claims are
19 mischaracterizations of opinions that she offers. I
20 don't think I have a lot to comment there. 6:09PM

21 Paragraph 6 we've already covered.

22 And then 8, she's just stating her
23 opinion.

24 And then 9, she's just saying she doesn't
25 have evidence to support my claim. But again, that 6:10PM

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1 doesn't mean it's incorrect. 6:10PM

2 So I think that's the extent of my
3 reaction to Ms. Hildreth.

4 BY MR. GRATZ:

5 Q Anything else? 6:10PM

6 A I don't think so. I think those are my main
7 points to be made. I'm happy to discuss Jørgensen.

8 Q Great. Let's turn to Exhibit 4.

9 A So for this one and for Dr. Reimers,
10 obviously those are more extensive, but obviously I 6:10PM
11 did think a bit about what they had to say.

12 On Jørgensen's, I think we covered some
13 grounds, so I'll try not to be too redundant. One
14 is that I think he frames his rebuttal as though the
15 burden of proof is on me. 6:11PM

16 That's incorrect. The burden of proof is
17 on him to show that there was no harm.

18 So he repeatedly criticizes me for not
19 demonstrating harm when the exercise here is for him
20 to demonstrate no harm. 6:11PM

21 So I think that's a false premise of his
22 report that's important to highlight.

23 Then I guess another main point that we
24 have covered so I won't belabor this too much, but,
25 you know, the fact still remains he brings in some 6:11PM

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1 new data points, he tries to argue that there's not 6:11PM
2 seasonality in any meaningful sense.

3 But he's -- it doesn't relieve him of the
4 issue, which is there clearly were major
5 macroeconomic events driven by primarily COVID that 6:12PM
6 were occurring exactly at the point in time that
7 he's looking at.

8 So we see big spikes in library e-Book
9 checkouts right around the time that he's looking at
10 and then they start to drop off on the latter 6:12PM
11 period, which there's lots of reasons we might think
12 that that would occur that had nothing do with the
13 closing of the National Emergency Library.

14 Simple reversion to steady state could be
15 one, in addition to many other events that were 6:12PM
16 occurring exactly at that point in time.

17 So I think, again, as I said before, his
18 overall analysis suffers from the fact that he's
19 effectively doing a time series analysis over two
20 points in time during a period where major 6:12PM
21 macroeconomic events were occurring. And then
22 trying to say that we can use that analysis to say
23 something definitive about one particular event
24 amongst many over that exact same period of time.

25 I think that's just not something we can 6:13PM

1 do without analysis. 6:13PM

2 There is a number of factors that are
3 changing, and even if you tried to just look at
4 seasonality per se, there's a number of other events
5 that in conjunction together with have an impact. 6:13PM

6 I think it's still the case that he's
7 looking at checkouts as opposed to revenues and as I
8 said in my report, there's a complex relationship
9 between checkouts and revenues.

10 And so I think he's not able to draw any 6:13PM
11 definitive conclusions by just looking at checkouts
12 alone.

13 Q I want to ask a question about that.

14 A Yes.

15 Q Which is: When it comes to patron demand, 6:14PM
16 if we are measuring patron demand, are checkouts or
17 revenues the right thing to look at?

18 A If you're talking about quantity demanded,
19 then that's fine if you want to talk about checkouts.

20 But here the harm that I understand that 6:14PM
21 we should be looking at is lost revenues.

22 And so he can say his analysis is about
23 demand, but the conclusions that he needs to draw
24 needs to pertain to the harm which would be measured
25 in revenues. 6:14PM

1 Q It's true, is it not, that if there is no 6:15PM
2 change in patron demand, there will be no change in
3 revenues?

4 MS. STEINMAN: Objection.

5 THE WITNESS: Not necessarily, because 6:15PM
6 what if there was a change in the pricing that was
7 engaged in or it could be the same number of units
8 but priced differently, then revenues would be
9 different.

10 BY MR. GRATZ: 6:15PM

11 Q Please continue.

12 A Let's see. I think the only other thing
13 that comes to mind is, you know, he critiques my
14 inclusion of audio books. We've already covered that
15 ground. 6:15PM

16 My assessment is that my recollection and
17 our rough assessment on that is that it doesn't have
18 a major impact on the figure that I put forth. I
19 think it goes down, like I said, somewhere in the
20 neighborhood of 5 to 10 percent. 6:16PM

21 I think that's -- I'm trying to look
22 through a little bit more.

23 Oh, I recall he said something along the
24 lines of some of the harm that I analyzed is
25 contradictory. I think that's setting it up 6:16PM

1 of him using relative volumes. He tries to paint it 6:18PM
2 as though it's -- I'm saying that one shouldn't look
3 at OverDrive or look at IA checkouts versus
4 OverDrive. Again, that's not my point.

5 My point was he couched everything in 6:18PM
6 terms of IA's checkouts as a percentage of
7 OverDrive, which by and large is a relatively small
8 percentage, but in a sense then that's setting him
9 up to find a zero effect. By starting with small
10 numbers to begin with, then by construction you're 6:18PM
11 making it easier to get a zero in your estimates.

12 But it's to mask the fact that in absolute
13 terms, it still can be a non-trivial impact.

14 Let's see.

15 He tries to compare the percentage decline 6:19PM
16 in OverDrive and compare that to the market decline
17 and says that the OverDrive decline was larger, it
18 was [REDACTED] versus 3 percent, and says that then
19 demonstrates that the macroeconomic forces couldn't
20 be driving it because OverDrive's decline is greater 6:19PM
21 in percentage terms.

22 I think that, again, is an overstatement
23 at least. I think the decline in the overall
24 market, even at 3 percent, turns into a significant
25 number in absolute terms, substantial number in 6:19PM

1 One thing is she does not -- she still 6:21PM
2 does not have any analysis that considers
3 plaintiffs' sales to libraries. She's not looking
4 at the library market, which I think is an important
5 component to this case. 6:22PM

6 As we mentioned before, she herself has
7 identified e-Books as the closest substitute, you
8 know, I think some level of analysis needs to be
9 included there, it's still not there.

10 You know, as we discussed before, her 6:22PM
11 rebuttal really just focuses on one of the analysis
12 she originally did. She did the -- she talks about
13 when the books were originally made available
14 through CDL on Internet Archive.

15 And, you know, I'll reiterate my point 6:22PM
16 that I made earlier today, which is even with her
17 added controls, she still has the problem of either
18 having a small window which would then allow us to
19 at least potentially have proper identification,
20 even though I think there's still many important 6:22PM
21 controls missing, around a point in time where for
22 the vast majority of the books, Internet Archive's
23 constituency was not very large.

24 So I would be worried that any effects she
25 might be able to find there is not indicative of 6:23PM

1 what the book's presence on the website would be in 6:23PM
2 2020. But then to extend her window out to years
3 like 2018, 2019 or 2020 means for a lot of the
4 books, we're talking about trying to say something
5 about impacts, say, five years later from posting a 6:23PM
6 book five years prior.

7 That's always going to be suspect in
8 econometric analysis because -- and I believe she
9 even made this -- agreed with this point in her
10 deposition that, you know, if we go -- the longer 6:23PM
11 the window, the more you worry that there are other
12 factors that are influencing the result and not the
13 one that you're looking at.

14 So I think that puts her analysis in a
15 tough spot. It makes it difficult with the methods 6:24PM
16 that she's using to get a reliable estimate of what
17 the impact of the book being made available in 2020
18 would have been.

19 I guess beyond that, you know, a lot of
20 the issues are -- there's still certainly a number 6:24PM
21 of confounding factors that she just either doesn't
22 or isn't able to include that even in a situation
23 where the data aren't available, that doesn't
24 automatically mean that the estimate means it's a
25 proper unbiased estimate. 6:24PM

1 So I just think that there is a number of 6:24PM
2 factors that still weren't included. She included a
3 couple more, but I don't think that is sufficient to
4 fully address the -- quite a few concerns that one
5 would have in terms of confounding factors. 6:25PM

6 I'm trying to think. She talks about --
7 she concedes some of my points about lifetime
8 analysis, how to properly do that and, you know,
9 what would be proper measures of the actual size of
10 the backlist. You know, her lower bound went quite 6:25PM
11 a bit lower, I think it went down to 45 percent.

12 I think under other assumptions, it's
13 possible for it to go even lower, but I think she
14 already conceded quite a bit in a regard.

15 What else? 6:25PM

16 MS. STEINMAN: Take your time and look
17 through.

18 THE WITNESS: She makes this point about
19 borrowing versus owning the book would make a big
20 difference in whether people buy the book later. I 6:26PM
21 didn't see a lot of foundation for that claim.

22 I didn't see a lot of support that she put
23 forward for that claim, so it seemed quite
24 speculative to me.

25 What else? I think this may have come up 6:27PM

1 when we were discussing Jørgensen, but I think this 6:27PM
2 also applies to Dr. Reimers that in a sense, even if
3 we take her analyses at face value, they are really
4 kind of average effects.

5 So it's not allowing us to distinguish 6:27PM
6 impact for individual works in suit. So there could
7 be -- you know, again, even if we took her analysis
8 as giving us a reliable estimate, which I've given a
9 lot of reasons why we would be worried about that,
10 the average effect that she's finding may mask 6:27PM
11 non-trivial impacts on particular works in suit.

12 Let me see if I have anything else.

13 I guess one other thing that I remember is
14 she puts in seasonality controls by putting in month
15 dummy variables. But that's not the same as putting 6:28PM
16 in time fixed effects, which I think is quite
17 important here.

18 BY MR. GRATZ:

19 Q How are those things different?

20 A So the seasonality variables that she 6:28PM
21 includes, so this would be, say, a January, a
22 February, a March dummy variable for each. And so for
23 each observation, it would tell you which month that
24 observation took place in.

25 So that could control for if year after 6:29PM

1 year, there's a seasonality component to what's 6:29PM
2 going on to, say, demand that varies through the
3 year.

4 So for example, the example I like to give
5 is gasoline consumption. We all know there is a 6:29PM
6 seasonality pattern where consumption goes up as you
7 get into summertime and then goes back down in the
8 wintertime. So that would be a consistent
9 year-after-year fluctuation through the year that we
10 would call seasonality effects. 6:29PM

11 But separate from that would be time fixed
12 effects which now you are allowing for differences
13 that are occurring for various reasons over time,
14 not limiting ourselves to just seasonality factors.

15 This would allow for, you know, September 6:29PM
16 of 2019 to have different general demand conditions
17 than September of 2020, for example.

18 So her September dummy variable is going
19 to put the same dummy variable for those two
20 observations. With time fixed effects, it would 6:30PM
21 allow for differences in general market conditions,
22 general values for the dependent variable in
23 September of 2020 versus September of 2019.

24 I think that's something that is worth
25 seriously considering here because we're exactly in 6:30PM

1 that situation where even if you properly identified 6:30PM
2 seasonality effects, there's reason to believe that
3 the overall macroeconomic conditions in 2020, even
4 if it's the same month, looked quite a bit different
5 than they did in the same month in 2019. 6:30PM

6 So I don't believe she, as I recall and
7 looking at it now, included time fixed effects that
8 would address that kind of concern, which I think
9 there's very good reason to have here because we all
10 know there was a major macroeconomic event in 2020. 6:31PM

11 I think that covers a lot.

12 Q Is there anything else?

13 A I think that's all I've got from what I can
14 pull together.

15 Q Just taking a moment now with Exhibits 3, 6:31PM
16 4 and 5, the Hildreth, Reimers -- strike that.

17 Exhibit 3, the Hildreth reply report,
18 Exhibit 4, the Jørgensen reply report and Exhibit 5,
19 the Reimers reply report before you, are there any
20 other opinions that you've formed in this case that 6:31PM
21 we've not -- that you have not identified for us
22 yet?

23 MS. STEINMAN: Again, I would encourage
24 you to take your time. I know it's been a very long
25 day, but take your time, look at them before you 6:32PM

1 answer the response. 6:32PM

2 THE WITNESS: I'll give it one more look
3 here to see if there's anything that stands out.

4 The only other thing I can think of, I
5 think one of the takeaways I had from Dr. Reimers's 6:33PM
6 rebuttal is quite a bit of reluctance to allow that
7 any findings in markets like for music or movies
8 would be informative with regard to books.

9 I think that's too strong a statement. I
10 think what I kind of read into the way she was 6:33PM
11 writing about that was because they are not exactly
12 the same, there's nothing we can learn from those
13 other markets.

14 And I guess my response would be, but
15 there are non-trivial similarities which would allow 6:33PM
16 us to then say there is at least some reason to
17 think that findings from some of those related
18 markets could at least be informative about what
19 we'd expect in this market.

20 BY MR. GRATZ: 6:34PM

21 Q Anything else?

22 A I think that's as far as I can go. I think
23 as far as I can remember, that's about all the ground
24 I remember covering.

25 Q Going once, going twice, let me know if 6:34PM

1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of California, do
3 hereby certify:

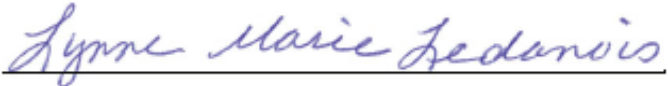
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that a record of the proceedings was made by me
7 using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is a true record of the testimony given.

10 Further, that if the foregoing pertains to
11 the original transcript of a deposition in a Federal
12 Case, before completion of the proceedings, review
13 of the transcript ☐ was ☒ wasn't requested.

14 I further certify I am neither financially
15 interested in the action nor a relative or employee
16 of any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19
20
21 Dated: June 13, 2022
22

23 
24

LYNNE MARIE LEDANOIS

25 CSR No. 6811